



14 MAR 2003

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In re Application of SCHERER	:	
U.S. Application No.: 09/889,098	:	
Int. Application No.: PCT/DE00/00068	:	DECISION
Int. Filing Date: 11 January 2000	:	
Priority Date: 11 January 1999	:	
Attorney Docket No.: 072330-0102	:	
For: METHOD FOR INDUCING OR PROMOTING	:	
AN ANTHOCYANIN COLORATION IN	:	
PLANTS AND/OR FRUIT WHICH	:	
BASICALLY PRODUCE ANTHOCYANIN	:	

This is in response to applicant's "Petition for Restarting Time Period for Replying to Defective Response Under 37 C.F.R. § 1.181(a) or, alternatively, Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(a)" filed 16 January 2003.

### **BACKGROUND**

On 11 January 2000, applicant filed international application PCT/DE00/00068, which claimed priority of an earlier Germany application filed 11 January 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 20 July 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 29 July 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 July 2001.

On 11 July 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 22 August 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 and an English translation of the international application must be filed.

On 22 October 2001, applicant filed an executed declaration and a purported translation of the international application.

On 16 November 2001, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/905), which indicated that the purported translation filed 22 October 2001 was improper because it did not include a translation of certain text within the drawings.

On 03 January 2003, the DO/EO/US sent a copy of the Notification of Defective Response to applicant via facsimile.

On 16 January 2003, applicant filed the present petition under 37 CFR 1.181. The petition states that the Notification of Defective Response mailed 16 November 2001 was never received.

### **DISCUSSION**

Pursuant to MPEP 711.03(c), the showing required to establish nonreceipt of an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicant's representative has provided the required statement.

With regard to item (2) above, applicant's representative has provided the required statement.

With regard to item (3) above, applicant's representative has submitted a docket record which lists responses due to the USPTO on the appropriate dates for all cases handled by applicant's representative. This docket record illustrates the absence of any listing of a response due to a Notification of Defective Response.

### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

As set forth in MPEP 724.05, in order to have certain information contained within the petition under 37 CFR 1.181 expunged, a petition under 37 CFR 1.59(b) must be filed along with the appropriate petition fee. Applicant is advised that a decision on such a petition will be held

in abeyance until the application is allowed or an *Ex parte Quayle* action or a Notice of Abandonment is mailed. See MPEP 724.06.

A proper reply to the Notification of Defective Response must be filed within ONE (1) MONTH from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are NOT available under 37 CFR 1.136(a).

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) to await applicant's reply to the Notification of Defective Response.



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